IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1196 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIMANBHAI KHALIYABHA HALPATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1196 of 1999

MR DEEPAK M SHAH for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR HM PRACHHAK APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-accused has challenged in this appeal the impugned judgment and order dated 22.11.1999 passed by the learned Addl. Sessions Judge, Surat camp at Vyara in Sessions Case No.244/98 whereby the learned Judge acquitted two other co-accused of the appellant-accused for the charges u/S.302 r/w. Sec.114 IPC convicting the appellant-original accused No.3 for the offences u/S.302 IPC and sentenced him to suffer life imprisonment in default to further undergo 1 month SI.

#. Jail record of the applicant-accused shows that he has remained in jail as under-trial prisoner for a period of 1 year and 1 month and after order of conviction and sentence dated 22.10.1999 he has remained in jail for a period of 4 years 5 months and 6 days as on 24.3.2004, meaning thereby, till today he has remained in jail after conviction for a period of 4 years 6 months and 6 days. Thus, in all for a period of more than 5 years 7 months he has remained in jail.

#. As per the prosecution case, deceased-Ramesh was having illicit relation with wife of Mangabhai Khaliyabhai Halpati-original accused No.1, elder brother of present appellant-original accused No.3. Matter was settled and it was decided that deceased will not keep any further relations with the wife of the appellant-accused No.1. But, in spite of it, their relations continued. It is because of that on the date of incident i.e. on 14.10.1998 at about 4.00 p.m. all the three accused came and called deceased-Ramesh, brother of complainant-Dinshbhai for having liquor with them. Thereafter, after one hour or so, Ramesh did not turned up, therefore, hid brother gone to search him. When he gone to the house of the accused at about 9.30 p.m., he found his brother lying in the blood pool opposite to the house of the original accused No.1-Mangabhai with injuries on his neck and face with axe. Thereupon, he raised shouts and inquired about all the three accused, but they were not found in the village. Therefore, he lodged FIR before all the three accused for the offence u/S.302 r/w.Sec.114 IPC for committing murder of his brother-Ramesh.

#. As stated earlier, the learned Trial Judge acquitted the original accused Nos.1 and 2 by giving benefit of doubt on the ground that both the original accused Nos.1 and 2 present at the place of incident. That shows that

they were innocent, but found that the original accused No.3-present appellant guilty for the offence u/S.302 IPC because he had absconded. Coupled with this, the learned Trial Judge also found that blood stains were found on the clothes of the accused, which was of deceased's blood group and the blood found on the muddamal axe, which was used for the commission of offence. On these three circumstances, the learned Trial Judge convicted the present appellant-accused for the offence u/S.302 IPC.

#. Having carefully gone through the impugned judgment and order of conviction and sentence passed by the learned Trial Judge as well as the evidence on record, it is clear that there is no direct evidence in this case and the entire case rests on the circumstantial evidence. Therefore, prosecution was required to complete the chain of circumstances. In case of of circumstances evidence, motive is very important circumstance. Admittedly, learned Trial Judge himself has come to the conclusion that the prosecution failed to prove the motive behind the murder. As per the prosecution case, deceased-Ramesh was having illicit relations with the wife of the original accused No.1-Mangabhai, elder brother of the present appellant-accused. He was acquitted by the learned Judge. In that view of the matter, when the Trial Judge came to the conclusion that prosecution failed to prove most important circumstance i.e. motive, then merely because the presence of the appellant-accused at the scene of offence would not be a ground to convict the appellant-accused. Muddamal axe recovered at the instance of appellant-accused is also not satisfactory.

#. Under the circumstances, when the learned Judge himself gave benefit of doubt to two other co-accused, then in our considered opinion, on the peculiar facts and circumstances of the case, present appellant-accused No.3 was also required to be given benefit of doubt because the chain of circumstantial evidence was not complete in this case as most important link i.e. motive was missing along with other circumstances.

#. In view of the above discussion, this appeal is allowed and the impugned judgment and order of conviction and sentence dated 22.10.1999 passed by the learned Addl. Sessions Judge, Surat camp at Vyara in Sessions Case No.244/98 convicting the appellant-accused-Chimanbhai Khaliyabhai Halpati for the offence u/S.302 IPC and sentencing him to suffer life imprisonment and to pay fine of Rs.400/= in default to further undergo one month S.I. is hereby quashed and set aside and the

appellant-accused-Chimanbhai Khaliyabhai Halpati is ordered to be released from jail forthwith, if not required in any other case. Fine, if paid, be refunded to the appellant-accused.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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